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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.C., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESUS C.,

Defendant and Appellant.

B292876

(Los Angeles County
Super. Ct. No. DK16616A)

APPEAL from orders of the Superior Court of Los Angeles County. Pete Navarro, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father Jesus C. appeals from the juvenile court's dispositional orders as to his son, J.C., contending the Los Angeles County Department of Children and Family Services (Department) failed to give him statutorily proper notice of the dependency proceedings. Finding that any notice deficiency was necessarily harmless, we affirm the orders below.

FACTUAL AND PROCEDURAL BACKGROUND

Because of the narrow issue on appeal, we limit our discussion to those facts necessary to resolve father's claim.

On April 5, 2016, when J.C. was about nine and a half years old, the Department received a referral alleging that his mother had physically abused J.C.'s younger half brother. On April 15, 2016, the juvenile court granted a removal warrant to detain both children from their mother. The Department then filed a Welfare and Institutions Code section 300¹ petition in the juvenile court alleging that mother had physically abused the children and had supervised them while under the influence of alcohol. J.C.'s father is nonoffending.

The juvenile court ordered J.C. to be detained in foster care. The court held in abeyance any paternity findings until the Department did due diligence on father. Mother reported that father had not had contact with her or with J.C. since J.C. was about two years old and that she did not know where father was or how to reach him.

About four months later, on August 9, 2016, father contacted the Department and spoke with a service worker. He said that he had lived with J.C.'s mother about nine years ago

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

and had visited J.C. about eight months ago. Father said he was living with paternal grandmother in Los Angeles and he provided his address and cell phone number.

The social worker went to that address the next day and left the statutorily required notice papers with paternal aunt, who signed for her receipt of the papers. Paternal aunt said father was away at work. The social worker contacted father by telephone the next day. Father said that he wanted custody of J.C., confirmed his address, asked to have an attorney appointed to represent him, and said that he would attend the upcoming August 15, 2016 hearing. The Department reported this information to the juvenile court.

Father did not attend the August 15 hearing. The court found him to be J.C.'s presumed father and ordered family reunification services for him consisting solely of monitored visits with J.C.

Two days after the hearing (the first of many at which father failed to appear), a Department investigator called father and requested paternal grandmother's contact information to discuss possible placement of J.C. in her home. Father declined to share her contact information and instead said that he would give the investigator's number to paternal grandmother so that she could contact the department if she wanted to do so.

Father also told the investigator that he would not be able to care for J.C. due to his diabetes and housing situation. Father said he would contact the Department later. As of the next hearing on August 30, 2016, neither father nor paternal grandmother had contacted the Department.

Father called the Department in September 2016 and left a message requesting visits with J.C. The social worker returned the call and left a message with her work and cell phone numbers and the foster agency social worker's contact information to

schedule visits. When father returned the social worker's call, he said he was busy with work and would call again when he could arrange visits.

Father did not call again until a month later. He again expressed an interest in visiting J.C., but again failed to follow through and arrange visits with any of the social workers. He called again the next month, but continued to be evasive about his availability for visits. During this time, the Department contacted father several times to try to schedule a home assessment. Father said he would contact the social worker when he was available. He cited his busy work schedule and said that he often traveled to Texas for a couple of months at a time for work.

Father met with the social worker at the Department's office on November 29, 2016. The social worker gave father a copy of the August 15 minute order granting him monitored visitation, which the court already had served on father by mail. Father said that he would contact the foster agency social worker to set up visits. When reminded that the Department would need to assess his home, father said he would contact the social worker when he was available.

Father did not appear at the six-month review hearing on December 20, 2016. Between the December 2016 hearing and the 12-month review hearing in June 2017, the social worker tried to reach father by telephone several times to arrange visits with J.C. During this time, J.C. appeared comfortable with his foster parents, was doing well in school, took karate classes, and received weekly individual counseling. Father did not visit J.C. or allow a home assessment during this six-month period.

In September 2017, almost a year and a half after J.C. had been detained, father requested a visit on J.C.'s birthday. The Department arranged for a monitored visit on J.C.'s birthday

from 1:00 to 5:00 p.m. Father did not arrive until 4:30 p.m. The social worker had repeatedly tried to call him while they were waiting. When father arrived, he explained that he had fallen off a forklift at work. During the visit, father acted appropriately with J.C. and seemed interested in and affectionate with him. Father told the social worker that he had not seen J.C. in years and missed him. The social worker reminded him that he could have weekly visits, but father said his work schedule was busy and varied. The social worker encouraged father to attend the next hearing on September 20, 2017.

But father skipped that hearing, too. Between the September 20, 2017 hearing and the initial 18-month review hearing on March 20, 2018, the Department social worker continued to try, unsuccessfully, to reach father by telephone to arrange visits. The foster agency arranged for a monitored visit on December 26, 2017, but father did not show up or cancel the visit.

In the meantime, J.C. continued to do well in his foster placement and in school and continued his weekly individual therapy and karate classes. J.C. reported that, should he be unable to reunify with his mother, he would want to stay with his foster mother. He said that contact with father had been limited and that he believed his father did not really care about him because he had not continued a relationship.

The initial 18-month review hearing on March 20, 2018—almost two years after J.C. had been detained—was the first hearing father attended. The court appointed counsel for father.

On May 10, 2018, counsel filed a section 388 petition on behalf of father, asking the court to vacate all dispositional findings and orders relating to J.C. on the ground that the Department gave notice of the dependency proceedings to J.C.'s paternal aunt, and did not personally serve father or send him a

copy by certified mail. Father filed an amended section 388 petition based on the same allegations of defective service on May 30, 2018. The court set the section 388 petition on calendar for hearing. The Department opposed the petition. The hearing was held on July 19 and August 20, 2018. After taking testimony and hearing argument of counsel, the court denied the section 388 petition. Father timely filed this appeal.

In his reply brief on appeal, father says the failure to serve him personally or by certified mail greatly altered the outcome of the proceedings. He says his son was removed from him on August 15, 2016, and the court believed his whereabouts were unknown until he appeared in court on March 20, 2018. These statements are belied by the record summarized above. His son was never removed from him; he has not had custody of his son since J.C. was two years old; and the Department kept the court well informed of their efforts to arrange visits and a home assessment.

DISCUSSION

“ ‘ “Since the interest of a parent in the companionship, care, custody, and management of his [or her] children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford him [or her] adequate notice and an opportunity to be heard. [Citations.]” ’ [Citation.]” (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1463.) “ ‘Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend.’ [Citation.] ‘The child welfare agency must act with diligence to locate a missing parent. [Citation.] Reasonable diligence denotes a thorough, systematic

investigation and an inquiry conducted in good faith.

[Citation.]’ ” (*In re J.H.* (2007) 158 Cal.App.4th 174, 182.)

“A section 388 motion is a proper vehicle to raise a due process challenge based on lack of notice. [Citation.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) “Section 388 permits ‘[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court’ to petition ‘for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court’ on grounds of ‘change of circumstance or new evidence.’ (§ 388, subd. (a).)” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.)

Father contends failure to provide proper notice may be structural error, requiring reversal. We are not persuaded. Certainly, there was no structural error in these proceedings.

There is no doubt father had actual notice of these proceedings before he contacted the Department on August 9, 2016. The Department social worker went to his home the next day, leaving the notice papers with his sister, and spoke with him by phone the next day, urging him to attend the August 15, 2016 hearing. He did not attend, but the court found he was J.C.’s presumed father and ordered the Department to assist in arranging monitored visits with father. After that, the Department diligently contacted father to arrange visits with J.C. and to assess his home.

Errors in notice do not trigger automatic reversal in the dependency context. “If the outcome of a proceeding has not been affected, denial of a right to notice and a hearing may be deemed harmless and reversal is not required. [Citation.]” (Compare *In re James F.* (2008) 42 Cal.4th 901, 918 with *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1116 [complete failure to attempt

notice was structural error].) If the defect in notice amounts to a denial of due process, the error is reviewed under the harmless beyond a reasonable doubt standard. (*In re J.H.*, *supra*, 158 Cal.App.4th at p. 183; see *In re James F.*, at pp. 917-919.) The harmless error analysis must be made in conformity with the “strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible [which] ‘would be thwarted if the proceeding had to be redone without any showing the new proceeding would have a different outcome.’” (*In re James F.*, at p. 918, citations omitted; see also Cal. Const., art. VI, § 13.) Father bears the burden to show he was prejudiced by the order challenged. (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 945.)

We conclude that the Department’s failure to give notice by personal service or certified mail was harmless beyond a reasonable doubt. The Department social workers were in frequent contact with father, urging him to arrange visits with J.C., attend court proceedings, and make his home available for an assessment. Father consistently put them off and visited J.C. only five times in the two years between August 2016 (when he first spoke to a Department social worker) and August 20, 2018 (when the court denied his section 388 petition). He explained that he could not visit J.C. more often because of his busy work schedule and other family obligations.

In sum, there is no basis on which to conclude that personal service on father or notice by certified mail would have changed any outcome, or that J.C.’s best interests would be served by revisiting the court’s orders. (See *In re J.H.*, *supra*, 158 Cal.App.4th at pp. 183-185; see also *In re Jasmon O.* (1994)

8 Cal.4th 398, 415 [juvenile court's ruling on a § 388 petition is reviewed for abuse of discretion].)

DISPOSITION

The orders are affirmed.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.